

1 rk 15
2 we could get it done.

3 COMMISSIONER APPLE: As a result of that
4 observation what would be your proposal then, Commissioner?

5 CHAIRMAN GRAVES: That they haven't met it.

6 VICE-CHAIRMAN ANTHONY: I would offer one other
7 statement. We could have a lengthy discussion about what
8 Congress should have done in passing this bill but frankly
9 it's the law and I'm just inclined to take it and look at it
10 and we're given an opportunity to consult. We may choose to
11 say: Folks, we have accumulated this nice box, we're calling
12 it the record, here it is and we may not have, and I don't
13 think we're required to have a vote on what the conclusions
14 are. I think it would be a better opportunity for us to
15 consult if we did so.

16 All right, now what would I do--and I want to say one
17 other thing. One reason I was struck by the formality of this
18 is I spent about twenty minutes looking through all of the
19 filings down in the Court Clerk's office and there were
20 attorneys from all over the country and entities who had made
21 their filings, and I do think that we are spotlighted by the
22 national scene of dealing with this Act and so I want to do
23 our best work.

24 What would I do? I would look at the A there: Presence
25 of facility based competitor. And I think that we need to say
are we on Track A or not and that they're entitled to pursue

1 rk 16

2 Track A and the ALJ found due to the lack of the residential
3 service being provided that they haven't met the requirement
4 of Track A. I don't see anything wrong with seeing if they
5 have met the provisions of Track B. They can do either one as
6 far as I'm concerned. And I think there that we are all clear
7 where it says "failure to request access" that doesn't apply
8 in Oklahoma, we've got a lot of people that are wanting to get
9 into the business and I don't think that the provisions at the
10 bottom that they--that we have anybody who's done it in other
11 than in good faith.

12 All right, and then when you come to the fourteen
13 points--and I think that's a separate topic. You've got Track
14 A or Track B and then whether you're on Track A or Track B--

15 CHAIRMAN GRAVES: Well, let's agree they're
16 doing Track A, okay?

17 VICE-CHAIRMAN ANTHONY: Okay, we're all in
18 agreement on that, I am. See, we're about to finish.

19 CHAIRMAN GRAVES: I wish.

20 VICE-CHAIRMAN ANTHONY: All right, I think they
21 are on Track A and whether they're on Track A or Track B
22 you've got to say: How are they doing on the competitive
23 checklist. And frankly you've got to meet the fourteen or not
24 and the ALJ didn't cover all of them but he covered some of
25 them and I think even Bell themselves by jumping up and
saying: Hey, wait a minute we'll work nights and weekends for

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the next few days and maybe we can get this thing done, I think they admitted that they haven't met all of them. And so--

CHAIRMAN GRAVES: I don't think that's what they were saying. They were saying--

VICE-CHAIRMAN ANTHONY: That is my interpretation.

CHAIRMAN GRAVES: I understand, I understand, I'm just saying I don't think that's what they were saying.

VICE-CHAIRMAN ANTHONY: Okay, that is my interpretation, that one didn't sell and so I'll just go by the points that the ALJ covered in his report because he covered 3 or 4 of them based on the record and witnesses he heard and testimony. So, anyway, that is what I think in crisp form is what we've got to do. We don't need a long philosophical discussion of what the Congress should have done or what the role of the states should be.

CHAIRMAN GRAVES: Well, I think it is critical.

VICE-CHAIRMAN ANTHONY: They are going to process this application, I think, following the law and they have given us a chance to comment on it. And so I have covered those points and we'll just send them the packet.

CHAIRMAN GRAVES: This very room has been witness to many varied and different interpretations as to what following the law means. And it's not as simple as that

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because, for example; on the checklist it says "access or interconnection provided or generally offered." Now I think what's important to note--and again I am basing all of this on the general assumption that meeting the checklist by generally offered items doesn't by itself mean that there is competition. Okay? I agree with the ALJ's determination that it's not a quantitative conclusion as to when competition is met, that there is no magic number that you have to have a certain number of customers. I don't buy the pipeline flowing analogy because what's to say that competitors go out there, they get the interconnection and then for whatever reason, a business decision, they don't want to spend the marketing budget in Oklahoma because Texas is a bigger market and we're going to--we have limited capital and we're going to market in Texas first because we can go to Dallas, Houston and San Antonio and there's a bigger pool of potential customers and we'll go there first so they don't take any customers in Oklahoma, per se.

I mean, does that mean that competition is not there? Well, no, it probably means there's a business decision made for a party not to proceed into a market. So I don't agree with the gas flowing through the pipeline kind of analogy.

VICE-CHAIRMAN ANTHONY: In that regard you and me and the ALJ are all together.

CHAIRMAN GRAVES: Good. What if someone comes into the market and they just can't market, they're not very good at it, their pricing is wrong, they're offering the wrong kind of services and they don't take any customers from it? So what's important to understand is that there is a distinction between saying: Yeah, they're generally offering terms and conditions under this but it doesn't mean that there is any kind of competition because that's the real crux of this issue in terms of opening local exchange markets is what are states going to do with the nuts and bolts, interconnection disagreements that are going to pop up over time? This doesn't end any process. This just begins the process. It doesn't complete anything. It's a step along the way.

And the underlying theme that every opponent of this application made was if you do this you give up leverage in local markets and you'll never be able to see competition come to local markets and that's--it was stated explicitly and it was implied in the various comments of the parties. And I disagree fundamentally with that because that is not the case. Access to local markets will go on and will occur regardless of whether Southwestern Bell gets into the long distance market or not. Personally, I think it will probably speed up if Southwestern Bell had the green light to go ahead into the long distance market because there are national games

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and strategies being played out here. I mean, we're not naive enough to say that Oklahoma is perhaps not a big market for a lot of national companies in terms of local exchange markets. We know that there are bigger local markets that folks want to get into. And the reason, quite frankly, that so many people are paying attention here is because we're the first state where there is an application pending to go into the long distance market.

So if we can arguably kind of slow that process down or prevent that action from occurring on this one hand, that gives us the opportunity to continue our national efforts to develop and expand our local markets. And I understand that and that's fine. But if for some reason the decision is made in Oklahoma to allow Bell in I suspect you'll see a renewed interest and the business decisions will be made by some parties to: Uh-oh, maybe we better go to Oklahoma now and work in developing local markets. Maybe you will, maybe you won't. The fact is those people that are here, and there are more than just one or two interconnection agreements that have been signed and entered to that seek to provide business and residential services. Those folks will continue to go forward and develop their markets. To the extent they have problems with the incumbent providers this body is here ready to answer.

VICE-CHAIRMAN ANTHONY: So I think you're

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2 reading it correctly, the checklist uses the word "provided or
3 generally offered."

4 CHAIRMAN GRAVES: Right, and I'm prepared to
5 say from my analysis they have met that element. They have
6 provided or generally offered those terms and
7 conditions. They have entered into interconnection agreements
8 with parties. I can only presume that the parties got all
9 they wanted or they would have been in asking for
10 arbitration. In the matter of AT&T what we heard, and quite
11 frankly that was the biggest one, the one that concerned me
12 the most, I think it's most important for us in terms of
13 really opening our markets because a 40 or \$50 billion company
14 that is trying to get in the market and obviously bringing a
15 little marketing muscle once they are out here. And there
16 shouldn't be any doubt in anybody's mind that once that
17 interconnection agreement happens that there is not
18 competition available in Oklahoma or the availability to
19 compete. I'll note the difference.

20 VICE-CHAIRMAN ANTHONY: Well--

21 CHAIRMAN GRAVES: Just a second. The point is
22 that procedural schedule has been set, those issues will be
23 resolved. We thought we resolved them early on, there were
24 obviously new issues that popped up that arguably no one could
25 understand and we're going to continue to prosecute them. The
fact is those terms have been generally offered. That it's

1 rk 22
2 not what somebody wants, this isn't specifically the OSF we
3 want, this isn't the number portability we want. Those kind
4 of issues are, for purposes of this analysis in my mind,
5 irrelevant. They have been offered. Are they minimum sort of
6 standards? Yeah. Are they exactly what people want? No,
7 probably not. Can they work them out among themselves?
8 Hopefully they can. To the extent they can't, come in and
9 we'll make those decisions for people. We did it in the
10 arbitration order. The ALJ was wrong in his findings where he
11 said interim number portability was an example where the
12 checklist hadn't been met when, in fact, we have addressed
13 that issue specifically in the arbitration order and set that
14 standard. It's not what people want, they may need a new
15 approved standard and that's fine, but it has been generally
16 offered. And I make that analysis based upon my underlying
17 theory that what's at the heart of all of this is a concern
18 that: Gosh, once you do this guys you've lost the ability to
19 let local markets open and I just don't agree with that. I
20 think we have the absolute ability and authority to do that
21 and we will exercise that.

22 And to that extent I'm less concerned about what goes on
23 in the long distance market from our particular regulatory
24 perspective and I think that those terms have generally been
25 offered whether somebody wants them or not. And I worry, it's
kind of silly sounding but Mr. Toppins made the comment about

1 rk 23

2 what if no one asks for white pages services? I suspect that
3 people are going to ask for it but in theory if you want to
4 carry it that you've got to check off each one of those
5 specifically and show some specific terms that's out there
6 where someone asked for it. What's to keep from gaming the
7 system and not asking for it and then standing up and saying:
8 I'm sorry, technically no one asked for this so you can't give
9 it to them? I mean that is a form over substance and I worry
10 about that.

11 VICE-CHAIRMAN ANTHONY: As I read your comments
12 I believe your interpretation of what the law calls for
13 especially where it says generally offered is the same as my
14 reading of it and is the same as what the ALJ says. And if we
15 turn nine lines up from the bottom of Page 35 of the ALJ's
16 report that's where he explains in his words how to read
17 that. And I don't see an inconsistency with your approach.

18 The difference then is in how to read the evidence. I
19 would like to read those nine lines up from the top. It says:
20 "The ALJ finds that the issue in this case is whether Bell has
21 satisfied the checklist by providing "access and
22 interconnection" in such a matter as to provide for
23 competition in the marketplace. Southwestern Bell does not
24 have to wait for every element on a competitive checklist to
25 be requested and used." I believe that is consistent with the
statements you made. "But all checklist items must be easily

1 rk 24

2 and equally accessible on commercially operational terms and
3 on equal terms to all." Then he gives his conclusion. "The
4 evidence in this case is that Southwestern Bell does not
5 currently provide all checklist items in such a manner. While
6 the ALJ does not accept...", because I think he had rejected
7 and you and I reject, "...does not accept the argument that a
8 particular quantity or quality level of competition must be
9 reached before Bell will be found to meet the requirements of
10 Section 271C. Bell must provide the items in such a manner
11 that all carriers..."

12 All right, that's his explanation of it. Now the
13 difference, though, is--if I heard you correctly--that you are
14 willing to find that under that standard that Bell has met all
15 fourteen requirements. The ALJ on the contrary and my
16 position on the contrary would read as it does at the top of
17 Page 36--

18 CHAIRMAN GRAVES: Where it specifically cites
19 portability?

20 VICE-CHAIRMAN ANTHONY: "That threshold level
21 has not been demonstrated in this case. The evidence in this
22 case indicates that there are currently impediments and
23 blockades in local competition. This recommendation will not
24 address each of the specific checklist items." He didn't go
25 all through fourteen because if you miss on one then you
haven't met them.

CHAIRMAN GRAVES: Right.

VICE-CHAIRMAN ANTHONY: But he does cover four of them in the full paragraph at the top of Page 36. So on those four you determine differently than the ALJ. You're correct that number portability is the first one he addresses. He says: "Southwestern Bell is not providing interim number portability." The second one he says is: "A process for providing co-location." And several of the spokesman yesterday talked about co-location and they seemed to indicate that is not something that you can cure in a matter of a few days. Directory assistance. And then they say concerning operations support systems, the OSF. And then he goes on and talks about the schedule for that is--what it is and it pertains to July of '97.

Okay, the ALJ finds that there is four examples where the requirements are not met. My position is to uphold the ALJ on those four. If I understand you correctly you're wanting to say that those four and the other ten have been met. So if Commissioner Apple tells us how he feels about it we've decided that part.

CHAIRMAN GRAVES: And just to address some of those concerns. If you reference the arbitrator's report in AT&T's request for arbitration and Bell or the joint request, I guess, you'll note that he specifically goes through and addresses number portability and co-location and access to

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2 poles, conduits and rights-of-ways and those issues. We
3 specifically address number portability in our order where we
4 found that we adopted the arbitrator's recommendation and we
5 found that the term "telecommunication service provider" needs
6 to be clarified.

7 And so, I mean, we have addressed those issues. Whether
8 they are to an individual party's satisfaction is in my
9 opinion irrelevant to whether or not it's been offered and we
10 have made a policy decision. You can disagree with the
11 decision we've made but we've made one. And to that extent I
12 think it is reasonable to say we have addressed all of the
13 issues. They're not to the satisfaction of all of the
14 parties.

15 But to the extent that someone is not complying with, for
16 example; the provisions of an interconnection agreement or the
17 arbitration order that we have out there that hopefully will
18 result in a--we've been told will result in an interconnection
19 agreement in a number of days, you know, no one has come to
20 the Commission seeking relief. We heard several suggestions
21 about co-location and that there are problems and yet when
22 specifically asked why didn't you come to the Commission to
23 get it resolved we had this discussion about: Well, we had to
24 weigh the relative merits of do we muddy the water here and
25 involve the regulator and cause problems in other negotiations
or do we see if it gets better. That's a business decision

1 rk 27

2 that I don't think we can then say they're not providing or
3 generally offering those services when someone else decides:
4 Gee, it's not to our satisfaction. Okay?

5 That's a concern I have. And I think it's clear it's
6 been generally offered. I think our arbitration orders to
7 date address the great majority of those issues and we send
8 off our comments and we go on and then we go about the
9 business of insuring that people are honoring the commitments
10 that were made in this courtroom and they are honoring the
11 specific rules that we have in place and that we go about
12 aggressively enforcing.

13 VICE-CHAIRMAN ANTHONY: So, I think--and the
14 reason I'm trying to just proceed in a structured manner is
15 the clock is ticking and we've got so many days left to decide
16 this thing. So I think on the fourteen checklist we cannot
17 vote to establish a Commissioner' interpretation and finding
18 of fact. We don't have to--we don't--we can box up the box
19 and say: Here, FCC, read for yourself. We don't--

20 CHAIRMAN GRAVES: We don't need to give them
21 anything else.

22 VICE-CHAIRMAN ANTHONY: We can have a cover
23 letter saying we voted that there were fourteen points met or
24 not met.

25 CHAIRMAN GRAVES: Right, and I think we need to
file comments one way or the other. We need to tell them. We

1 rk 28

2 have either reviewed it in the manner we think is appropriate
3 and we find that they have not met the elements of the Federal
4 Act and we don't necessarily have to enumerate reasons, we can
5 if we want to, or we need to tell them we reviewed it and we
6 think they have met the provisions of the statute and either
7 give them the record to review it or to state in some specific
8 fashion why. I mean to not make comment, I think, would be an
9 abrogation of our responsibility. We need to step up, make a
10 decision one way or the other and go about the business of
11 opening up markets.

12 VICE-CHAIRMAN ANTHONY: Okay, well, while we're
13 all thinking about who would like to make a motion and how we
14 would might like to vote on that, would it be appropriate to
15 go back to Track A and just see if we agree or disagree on
16 that one?

17 CHAIRMAN GRAVES: It's Track A, I think we
18 agreed on that. I don't know, Ed may not have agreed but we
19 have two votes so we don't need you on that one.

20 VICE-CHAIRMAN ANTHONY: There's something I
21 want to say on Track A, though, and I get it both from the
22 ALJ's report and he got it from listening to all of the
23 arguments from the parties and the attorneys and so forth. On
24 Page 25 of his report at the very top he addresses the point
25 that the wording in Track A is the word "is providing" and in
the copies I gave all of us I circled that. In Track B it

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2 uses the word "offers". And the fourteen points I think it
3 uses the lower standard of "provides or generally
4 offers". But I do agree with you that A is the track that we
5 are on.

6 CHAIRMAN GRAVES: Sure.

7 VICE-CHAIRMAN ANTHONY: Now we need to decide
8 whether we agree that Bell has met it or not met it.

9 CHAIRMAN GRAVES: Okay, so the question is:
10 Has Bell entered into one or more binding agreements that have
11 been approved under 252--

12 VICE-CHAIRMAN ANTHONY: Okay.

13 CHAIRMAN GRAVES: --specifying terms and
14 conditions. So have they entered into one or more binding
15 agreements, yes.

16 VICE-CHAIRMAN ANTHONY: Yes.

17 CHAIRMAN GRAVES: Okay, and under those terms
18 and conditions are they to provide services? Yes. Have they
19 physically got to that point today? No. Do we wait and make
20 Bell file one every month as these things get a little closer
21 to being done or can we reasonably presume that since we've
22 issued these orders we intend to enforce these orders, they
23 have met the obligation of entering into binding agreements
24 that they have met the general terms of the statutory
25 provisions. And that's my reading of it.

VICE-CHAIRMAN ANTHONY: Okay, is it your

1 rk 30

2 reading that they're on Track A and they have failed, they
3 have failed--

4 CHAIRMAN GRAVES: No.

5 VICE-CHAIRMAN ANTHONY: --because as the ALJ
6 says in his report, and he makes the finding, that for one,
7 they don't have the--met the requirement for residential.
8 That's what the ALJ says, that's my position.

9 CHAIRMAN GRAVES: Well, and I had disagreed
10 with the ALJ on the first week I got here on an issue and have
11 from time to time disagreed with him over the past and that's
12 no different. I mean, I don't know offhand how many signed
13 interconnection agreements we have.

14 VICE-CHAIRMAN ANTHONY: Okay.

15 CHAIRMAN GRAVES: But I know that we have
16 signed interconnection agreements that seek to provide
17 business and residential services.

18 VICE-CHAIRMAN ANTHONY: Okay.

19 CHAIRMAN GRAVES: No one is jumping up and down
20 and saying there aren't. So if there's an opportunity--if
21 it's a material misstatement of facts somebody correct me but
22 it's not. There are signed binding agreements that provide
23 business and residential service. So we've met that element.
24 The ALJ interpreted it differently. I won't say he's wrong or
25 he missed it, he just interpreted it differently than I would
have interpreted it.

VICE-CHAIRMAN ANTHONY: All right, so I was optimistic there for a moment but am no longer. We do not agree on that one. We agree that we're talking about Track A.

CHAIRMAN GRAVES: Uh-huh.

VICE-CHAIRMAN ANTHONY: And Track A uses the strong word "providing".

CHAIRMAN GRAVES: Right.

VICE-CHAIRMAN ANTHONY: I know you always love it when I bring the Black's Law Dictionary and you can turn to the definition of the word "providing", and not being a lawyer I do know once I had a little contract law and we all know that word "offer" down there and the word "offer" and the word "providing" are different and that was addressed yesterday in argument.

Anyway, the ALJ says that for one thing they're not providing residential subscribers, that is one of the requirements there, and therefore he finds that they have failed to meet the--and that's the word at the very top under C--requirements for Track A. But you find that they have met the requirements of Track A?

CHAIRMAN GRAVES: They've entered into binding agreements to provide those services, yes.

VICE-CHAIRMAN ANTHONY: Okay, now you know why you're in the middle.

CHAIRMAN GRAVES: And the reason I say that is

1 rk 32

2 that, you know--and I'm not suggesting anybody is gaming the
3 system. But the potential exists to--under a strict
4 interpretation of that to have someone enter into a binding
5 agreement and then just take forever to complete the process.
6 There is always some other issue: Well, no, now I've got to
7 have this, now I've got to have that, now I have to have this,
8 whether it's either side, the incumbent or the competitive LEC
9 to game it for any number of reasons. And I think it's a
10 mistake to read it in a strict interpretation in such a way
11 that you create the opportunity for someone to play games with
12 this process later down the road.

13 The idea--and I think we can agree we want the open
14 markets as fast as possible so how do we do that? We make
15 people honor their binding agreements. If they're not
16 honoring the agreements they've entered into somebody please
17 tell us and we'll beat people up side the head until they
18 do. We can still do that.

19 VICE-CHAIRMAN ANTHONY: Okay. So anyway, and
20 you may have a different structure for approaching this but I
21 think those are the questions we need to ask--answer yes or no
22 or we can say: Here's the box of materials, we're not going
23 to vote as a part of our consultation to the leaders of the
24 FCC. We've tee'd it up for you, Mr. Ed.

25 COMMISSIONER APPLE: Is it my turn yet?

VICE-CHAIRMAN ANTHONY: Yes, sir, start anyway

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2 you want.

3 COMMISSIONER APPLE: What time is it?

4 MS. LAVALLE: It's breakfast, Your Honor.

5 COMMISSIONER APPLE: Well, let me ask that in
6 the phrase of what time is it and then let me follow up and
7 answer my own question. It's time to make a clock meaning I
8 want to get very fundamental here as to where I stand on
9 this.

10 What's in it for the consumer? Again just returning to
11 why it is we do what we do and I occasionally sit in my office
12 and wonder why I should be sitting there and I return always
13 to something I feel very strongly about. I should be doing
14 something to enhance and nourish and culture the lives of the
15 people of Oklahoma. That's a fundamental statement that I
16 don't think anyone in this room would argue with that that's
17 the premise of my job description. So if I don't do something
18 that enhances the cultures and nourishes the lives of
19 Oklahomans then there is no justification for any of us being
20 in this room deliberating this today if the answers we arrive
21 at don't do that. And in so doing we have to take some rather
22 vague and murky circumstances and interpret them from our own
23 perspective and that I have done. If anyone says here we are
24 totally out of the haze layer in our perspective on this
25 please let me know and I will rise to that level.

But at this time I have some murkiness and cloudiness

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that I have to deal with in my perspective but I am very confident at this time where my perspective is taking me. And that is the quicker and the faster we move along the tracks of giving the consumers choices and truly playing the game of competition, then for us to do anything other than that is going to be irresponsible relative to the application of Southwestern Bell.

I think we had a parallel circumstance here, and I think it is well-known, if not I will state it on public record, that I oppose House Bill 1815 in the strongest terms and I did not like it when it was filed and I so expressed my opinion on that and will vigorously do what I can to see that it's defeated in the House of Representatives and if passed by the Senate and it goes to the Governor's desk I'll ask him to veto it. I hope I've cleared that up.

Correspondingly, though, I support the endorsement of the application, Southwestern Bell to proceed with their application to the FCC. In so doing I arrived at the conclusion there is a lot of difference between the words "can" and "did". Commissioner Anthony, I, too, keep a dictionary close to any desk and I try to be specific when it's necessary but there are interpretations. I've asked the question of some people whose judgment I value relative to the fourteen points. I said: Can you conclusively argue that they have not been met? The answer was no. Can you

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conclusively argue that they have? I cannot. The murkiness here of whether someone has or has not met those fourteen points is subject to a lot of interpretation and debate. I choose to look at it from the point of view of "can" versus "did". I believe from that point of view there has been an effort to comply with the fourteen points. And so I'm satisfied that even though Judge Goldfield identified some areas, I do think it's a perspective factor and I am comfortable with the fact that the fourteen points have been met.

Do we have effective competition? Ah, tricky, tricky isn't it? Ah, effective, what does that mean? Does one of something indicate competition? And this is where Congress and the FCC have made our job a little harder. They use words that are not defined. And so is one of something effective competition or is it 10, is it 1,000, is it 50 percent of the market? I'm not sure. I don't know. So I'm comfortable with the fact that effective competition means: Have the rules of the game been established and the players had a chance to participate. Commissioner Graves alluded to the fact that yes, technically there are those that could comply with certain--in the agreements could stonewall particular items and say: Ah-ha, those aren't being provided. So in my judgment we have to look at the "can" factor versus the "did" factor.

1 rk 36

2 So having said that I'm prepared to support the
3 application of Southwestern Bell to proceed to the FCC in
4 whatever form we would arrive at here in these two votes from
5 the Commissioners to say that I don't think it's adjudicatory,
6 I think it is merely a pass through. I think we would be
7 doing a service to the nation if we did this and put the
8 pressure where it belongs. I think the FCC has to be more
9 clear in some of the interpretations and that's the way to do
10 it. We're not going to do that here today regardless of what
11 happens. If we don't do it someone else is going to do
12 it. So we're going to be part of the process one way or
13 another. Do I think us doing it today will help speed it
14 along, yes, I do. If we don't do it, it will fall to someone
15 else and then we'll be--just all we would have done is delayed
16 the options for Oklahomans.

17 I share very vigorously the comment, and the reason I
18 related to 1815, I think we will have regulatory authority to
19 be certain that the people who have the responsibility for
20 competing are, if they are not I will be one unhappy
21 camper. And it isn't that one Commissioner can do a lot but I
22 think I can raise enough of a public awareness that the game
23 must be--and I think--and I had this conversation with people
24 earlier in the week, since we are first here, since we do have
25 an application that we must be very pristine in the way we
proceed. And for us to do less than that would be a

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disservice to the State of Oklahoma. And so I want to withstand all the scrutinies of having done this in a way that would meet the expectations of the Congress in setting up the legislation to make this possible to move forward here.

Will there be bumpy roads to travel? Heavens, yes. But should we do it now or do it later? I use the analogy, and I think it's true, we can whack off this dog's tail one inch at a time or we can whack it off once and get it done. Let's whack it off once and let's get it done. Let's move on.

CHAIRMAN GRAVES: Well, then procedurally I would suggest that we affirm in part and deny in part the recommendation of the ALJ and that we direct staff to prepare comments for submission to the FCC consistent with the general finding of the Commission that the elements of the Act have been met and ask that you circulate those comments to all three Commissioners' offices for input and that we have a final meeting, if you will, to approve the final language in a formal setting and that we then submit to the FCC all relevant information that has been developed under this docket in whatever form is most appropriate to them and most conducive to them reviewing our suggestions and comments.

Are there other procedural issues, administrative issues that we need to--

VICE-CHAIRMAN ANTHONY: Does that mean that they're preparing an order in response to the application in

1 rk 38
2 PUD 97---

3 CHAIRMAN GRAVES: That's what I said. We would
4 prepare an order that says we affirm in part and deny in part
5 the ALJ's findings and then that's limited to that and then we
6 go into a more expansive discussion of the policy concerns we
7 have in the comments we file at the FCC. I might suggest that
8 we might want to just have some general sort of comment
9 language on the part of the Commission as a whole and that we
10 allow individual Commissioners who wish to file individual
11 comments should be able to do that and that they be submitted
12 in conjunction with the general statement of the
13 Commission. I know that Commissioner Anthony and I have some
14 very definite opinions about it and I think we ought to both
15 be able to file appropriate comments with the FCC, give them
16 some understanding as to our thought processes, not quite
17 frankly that they tend to listen to state regulators a whole
18 lot. And I think this is an underlying theme and a lot of the
19 difficulties we've had just in procedurally working out where
20 we go from here. But it will be interesting to see what their
21 reaction and response is.

22 Is there anything further at this point? Mr. Moon?

23 MR. MOON: Your Honors, this is technically
24 still part of the hearing and--

25 CHAIRMAN GRAVES: Yes, sir.

MR. MOON: --not exactly deliberation. I just

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2 want to preserve my objection to your ruling on the
3 procedural--

4 CHAIRMAN GRAVES: Certainly.

5 MR. MOON: --aspects of this.

6 CHAIRMAN GRAVES: Certainly. And if any other
7 party wishes to be noted the same way we would certainly be
8 happy to do that because we don't want to deny anybody the
9 opportunity to put anything on this record and to raise any
10 issues that they might think are important at the FCC.

11 VICE-CHAIRMAN ANTHONY: What's the ruling on
12 the document--

13 CHAIRMAN GRAVES: My ruling would be that it
14 would be included and that everything at this point is to be
15 included in the record and we have previously noted the
16 objection of all of the parties to that particular item and
17 certainly want to acknowledge that everyone has the right to
18 raise those particular issues as fatal flaws that they think
19 are appropriate at the FCC.

20 MS. LAVALLE: Commissioner Graves, AT&T would
21 also join in the objection--

22 CHAIRMAN GRAVES: Sure.

23 MS. LAVALLE: --of the determination. And I
24 wanted to respond as well when you opened up these proceedings
25 by saying that it really was an opportunity to clarify
positions--